

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sophia Manuel	Team: Team # 4	CCRB Case #: 201407434	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/23/2014 8:02 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 81	18 Mo. SOL 1/23/2016	EO SOL 1/23/2016	
Date/Time CV Reported Thu, 07/24/2014 1:00 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 07/24/2014 1:00 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Franky Joseph	30527	940320	081 PCT
2. POM Joel Edouard	24576	941696	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Christophe Koenke	09046	916016	081 PCT
2. SGT David Franks	4013	934880	081 PCT
3. SGT Dustin Edwards	02809	938420	PSA 3
4. POM Brian Hellberg	08253	944641	081 PCT
5. DT2 Daniel Perez	06374	918144	DB BNHM
6. DT2 Isidro Arroyo	01269	896204	DB BNHM

Officer(s)	Allegation	Investigator Recommendation
A.POM Franky Joseph	Force: PO Franky Joseph used a chokehold against § 87(2)(b)	
B.POM Joel Edouard	Force: PO Joel Edouard pointed his gun at § 87(2)(b)	
C.POM Joel Edouard	Force: PO Joel Edouard used physical force against § 87(2)(b)	
D.POM Joel Edouard	Force: PO Joel Edouard struck § 87(2)(b) with a baton.	
E.POM Joel Edouard	Force: PO Joel Edouard used physical force against § 87(2)(b)	

Case Summary

On July 23, 2014, at approximately 8:02 p.m., PO Joel Edouard and PO Franky Joseph of the 81st Precinct stopped § 87(2)(b) on suspicion of criminal possession of marijuana and arrested him. During the apprehension, PO Joseph placed § 87(2)(b) in a chokehold (**Allegation A**). PO Edouard pointed his gun at § 87(2)(b) punched him, struck him with a baton, and stomped on his head (**Allegations B-E**). § 87(2)(b) was charged with § 87(2)(b), § 87(2)(a) 160.50 § 87(2)(b) (arrest report encl. 47-49; IAB log encl. 21-27; CCRB complaint encl. 28-30).

§ 87(2)(b) captured video footage of the incident and supplied it to the CCRB, as well as to several news outlets (video summary encl. 31; video attached to IA #24). As a result of the attention that the incident received from the press, the case was put on the sensitive case list (press clippings encl. A-M). IAB conducted an investigation into PO Edouard and substantiated allegations against him. He was suspended for thirty days and returned to modified duty in the Property Clerks Division. A request for the IAB case file is pending. On February 3, 2015, PO Edouard was arrested for official misconduct and two counts of assault in regards to the incident (arrest report encl. 104-106). PO Edouard's criminal case and Departmental trial are ongoing (encl. 107-109).

This case was originally assigned to Inv. Luke Petrinovic. It was reassigned to ASI Evelis Otero on December 26, 2014. The Strike Team reviewed the case and reassigned it to Inv. Sophia Manuel for closing on March 11, 2015.

Mediation, Criminal and Civil Histories

This case was not eligible for mediation. Inquiry into whether § 87(2)(b) filed a Notice of Claim is pending and will be added to the case file upon receipt. § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b) (encl. 95-103).

Civilian and Officer CCRB Histories

- PO Edouard has been a member of the NYPD for 8 years and has been the subject of allegations in seven prior CCRB cases. Two allegations were for physical force and were not substantiated. One allegation of abuse of authority was substantiated (encl. 16):
 - In case 201102466, an allegation that PO Edouard punched someone was unsubstantiated.
 - In case 201206687, an allegation that PO Edouard pushed someone was exonerated.
 - In case 201406519, an entry allegation was substantiated. The board recommended Command Discipline – B. The NYPD disposition is pending.
- PO Joseph has been a member of the NYPD for 9 years and has been the subject of allegations in 10 prior CCRB cases. One allegation was of physical force and was exonerated. Three allegations of abuse of authority were substantiated (encl. 17-18):
 - In case 200910377, an allegation of unspecified force was exonerated.
 - In case 201206906, stop and search of person allegations were substantiated. The board recommended charges. After negotiations with the NYPD, PO Joseph lost two vacation days.

- In case 201406519, an entry allegation was substantiated. The board recommended Command Discipline – B. The NYPD disposition is pending. The board also cited PO Joseph for intentionally making a false official statement to the CCRB.

Potential Issues

The Brooklyn District Attorney is pursuing criminal charges against PO Edouard and requested that the CCRB place the investigation on hold. The CCRB did not interview officers and did not obtain sworn statements from civilians. The findings of the CCRB investigation are based on video footage from § 87(2)(b) police documents, and brief phone statements from witnesses.

Attempts to Contact Civilians

On August 1, 2014, § 87(2)(b)'s attorneys, § 87(2)(b), were contacted. § 87(2)(b) declined to allow § 87(2)(b) to be interviewed by the CCRB. On September 23, 2014, § 87(2)(b) stated that they were still unwilling to allow § 87(2)(b) to be interviewed by the CCRB.

§ 87(2)(b) provided a phone statement to the CCRB on July 28, 2014, but wanted to consult with his attorney before providing a sworn statement. On August 11, 2014, § 87(2)(b)'s attorney, § 87(2)(b) was called and he stated that he was not sure he wanted § 87(2)(b) to participate in the CCRB investigation. § 87(2)(b) did not answer multiple attempts to find out whether he wanted § 87(2)(b) to testify.

Two potential witnesses were identified from the original IAB log related to the incident: § 87(2)(b) and § 87(2)(b) however, when § 87(2)(b) was called on July 30, 2014, he stated that he did not witness the incident, and only saw it on the news. § 87(2)(b) provided a phone statement on July 31, 2014. She declined to be interviewed by the CCRB.

On September 2, 2014, the IAB investigator assigned to the concurrent IAB investigation identified two additional potential witnesses: § 87(2)(b) and § 87(2)(b) however, when § 87(2)(b) was called on September 11, 2014, he stated that he did not directly witness the incident. On September 23, 2014, § 87(2)(b) provided a phone statement to the CCRB, but missed two appointments to provide sworn statements.

Findings and Recommendations

Allegation A – Force: PO Franky Joseph used a chokehold against § 87(2)(b)

Allegation B – Force: PO Joel Edouard pointed his gun at § 87(2)(b)

Allegation C – Force: PO Joel Edouard used physical force against § 87(2)(b)

Allegation D – Force: PO Joel Edouard struck § 87(2)(b) with a baton.

Allegation E – Force: PO Joel Edouard used physical force against § 87(2)(b)

As per DI Scott Henderson of the 81st Precinct, § 87(2)(b) stated the following in regards to this incident: he rolled a marijuana cigarette in front of 223 Malcolm X Boulevard in Brooklyn, but it was not in plain view when PO Joseph and PO Edouard approached him and asked for his identification. § 87(2)(b) complied with their request. They told him to stand up, and he complied. They tried to handcuff him, but he stepped back, put his hands up, and asked what he did. The officers took him to the ground. PO Joseph got on top of him and put his hand near § 87(2)(b)'s neck. PO Edouard took out his gun and pointed it at § 87(2)(b)'s head and chest. PO Edouard punched § 87(2)(b)'s groin area twice and struck his legs four times with a hard object. More officers came. PO Edouard got up, picked up a set of handcuffs, walked to a store, came

back, and kicked the top of § 87(2)(b)'s head, causing his head to hit the concrete pavement. § 87(2)(b) became dizzy and blacked out for a minute. A Hispanic male officer said, "What are you doing?" to PO Edouard. Officers handcuffed § 87(2)(b) and placed him in a police car (encl. 24-27).

Each of § 87(2)(b)'s force allegations is corroborated by video footage:

- The video begins with PO Edouard, PO Joseph, and § 87(2)(b) pressed together against a parked car. § 87(2)(b)'s hand is in the back of his pants. He removes his hand and gives something to a man who quickly enters the scene and then exits. PO Edouard pulls § 87(2)(b) to the ground, and his head strikes the pavement. The officers are on top of § 87(2)(b) hugging his body as he rolls onto his back. PO Joseph holds one of § 87(2)(b)'s hands against § 87(2)(b)'s chest, while § 87(2)(b)'s other hand lies on the ground, palm up.
- At 00:00:29, PO Joseph presses his hand into the front of § 87(2)(b)'s neck with one hand, pressing the neck into the pavement. PO Joseph and PO Edouard are on top of § 87(2)(b) each holding one of his hands.
- At 00:00:36, while PO Joseph continues to press into § 87(2)(b)'s neck, PO Edouard takes out his gun with his free hand and points it briefly in the air. He then points it at § 87(2)(b)'s chest for one second, while holding it approximately 18 inches away before placing it back in his holster.
- At 00:00:40, § 87(2)(b) pushes his feet against the ground, sliding his body a few inches. He pulls one hand free and reaches for PO Joseph's hand, which is still gripping his neck. PO Edouard pulls § 87(2)(b)'s hand off PO Joseph's wrist. § 87(2)(b) says in a raspy voice, "Yo, yo, help me."
- At 00:00:46, PO Joseph releases his grip on § 87(2)(b)'s neck. PO Joseph has been pressing his hand alternately into § 87(2)(b)'s neck and chest for the last 17 seconds. § 87(2)(b) continues pushing his feet against the ground and sliding his body several inches. He frees his hands and grabs PO Joseph's arms, which are holding his chest and arm.
- At 00:00:49, PO Edouard forms a fist and motions towards § 87(2)(b)'s groin area twice. It is unclear if the first strike makes contact, but the video shows that the second does. § 87(2)(b) enters the scene and yells at the officers to stop punching § 87(2)(b). He pulls one arm free, reaches for her, and rolls over onto his side. PO Edouard is holding his legs and PO Joseph is on his torso. Several officers enter the scene, saying, "Back up," and, "Stop resisting."
- At 00:01:12, § 87(2)(b) is lying on his stomach with one arm under his body and one arm out of view. His legs are still. PO Joseph is lying on § 87(2)(b)'s back. Several officers stand above. PO Edouard stands up with his asp out and extended and taps § 87(2)(b)'s leg with it before walking away.
- PO Joseph and several other officers are on top of § 87(2)(b). PO Joseph picks up handcuffs off the ground. He walks towards § 87(2)(b) but then turns and goes down towards a store. He walks back to § 87(2)(b). At 00:01:36, he stomps on § 87(2)(b)'s head. The civilians scream, and a sergeant, who has a hand on § 87(2)(b)'s shoulder, pushes PO Edouard back. PO Joseph is still straddling § 87(2)(b) while several officers stand over him. They handcuff him, stand him up, frisk and search his pockets, and walk him to a car (encl. 31).

§ 87(2)(b) and § 87(2)(b) who witnessed the entire incident, corroborated § 87(2)(b)'s account of the events leading up the beginning of the video. In their statements, there was no indication that the officers had any reason to fear for their safety or to suspect that § 87(2)(b) was armed or dangerous. § 87(2)(b) and § 87(2)(b) corroborated the allegations that PO

Joseph used a chokehold against § 87(2)(b) and that PO Edouard pointed his gun and stomped on his head. § 87(2)(b) thought that § 87(2)(b) could not breathe, which was why he reached for her and tried to remove PO Joseph's hand from his neck. § 87(2)(b) corroborated § 87(2)(b)'s allegation that PO Edouard struck his leg with a baton (encl. 34-35). § 87(2)(b) who watched the incident through her window, corroborated the gun pointed and head stomp allegations. She told the 911 operator that she thought § 87(2)(b) could not breathe, though she did not say why (encl. 32-33).

In police documents, there is no mention that PO Edouard or PO Joseph suspected that § 87(2)(b) was armed or dangerous. The police documents do not indicate that § 87(2)(b) behaved violently or threateningly, with the exception of PO Edouard's entry in his memo book, without elaboration, that § 87(2)(b) "fought." In the arrest report, complaint report, and in his memo book, PO Joseph described § 87(2)(b)'s resistance only as intentionally preventing PO Joseph from arresting him (encl. 37-89).

Patrol Guide Procedure 203-11 states that only the minimum amount of force necessary to overcome resistance will be used to effect an arrest. Members of the NYPD will not use chokeholds, which include but are not limited to any pressure to the throat or windpipe, which may prevent or hinder breathing or reduce intake of air. Patrol Guide Procedure 203-12 states that police officers shall not use deadly physical force against another person unless the officers have probable cause to believe that they must protect themselves or another person present from imminent death or serious physical injury (encl. N-Q). An officer may draw his firearm and point it at another person so long as the officer has a reasonable fear for his own or another person's safety. Police Department v. Gliner, OATH Index No. 955/00 (encl. R-15).

§ 87(2)(g)

§ 87(2)(g)

The video also depicts PO Edouard punching § 87(2)(b)'s groin at least once and hitting his leg with a baton at least once. § 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Finally, the video shows PO Edouard stomping on § 87(2)(b) s head as § 87(2)(b) lies on the ground, surrounded by officers. IAB has already substantiated this force and the Brooklyn District Attorney has charged PO Edouard with assault. § 87(2)(g) [Redacted]
[Redacted]
[Redacted]

Team: _____

Investigator:	_____	_____	_____
	Signature	Print	Date

Supervisor:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date

Reviewer:	_____	_____	_____
	Title/Signature	Print	Date